

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JOSHUA WAYNE BEVILL,	§	
Movant,	§	
	§	
v.	§	No. 3:16-cv-3152-B (BT)
	§	
UNITED STATES OF AMERICA,	§	
Respondent.	§	

**ORDER**

This matter is before the Court on the United States Magistrate Judge's December 30, 2021 Findings, Conclusions, and Recommendation ("FCR") (doc. 46). The December 30, 2021 FCR addressed movant Joshua Wayne Bevill's motion to vacate, set-aside, or correct sentence under 28 U.S.C. § 2255 (doc. 2). For the reasons discussed below, any pending motions are DENIED as moot, Bevill's objections to the FCR are overruled, the Magistrate Judge's FCR is accepted, and a certificate of appealability is denied.

**Discussion**

On December 30, 2021, the Magistrate Judge issued Findings, Conclusions, and a Recommendation regarding Bevill's § 2255 motion. On January 13, 2022, the Court received Bevill's numerous objections. On January 31, 2022, the Government was directed to file a response to Bevill's objections within thirty days. Following an extension of time, the Government filed its response on March 16, 2022.

With a dispositive matter, a magistrate judge issues findings and conclusions, recommending a disposition intended to support a district judge's ruling. 28 U.S.C. § 636(b)(1)(B), (C); Fed. R. Civ. P. 72(b). By statute, a party can file objections within fourteen days after being served with a

copy of the magistrate judge's ruling. Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(C). If a timely objection is not filed, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b) advisory committee's note. Following its review of the recommendation, a district court can either accept, reject, or modify the magistrate judge's recommended disposition; receive further evidence; or return the case to the magistrate judge with further instructions. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(C).

The Court has reviewed Bevill's objections (doc. 47) and the Government's response (doc. 52). Bevill's objections are meritless, and they are **OVERRULED**. Consequently, the Court **ACCEPTS** the Magistrate Judge's Findings, Conclusions, and Recommendation (doc. 46).

Finally, the Court must determine whether the issuance of a certificate of appealability ("COA") is appropriate. Under Rule 11 of the Rules Governing Section 2255 Proceedings, the District Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Because the Court is denying Bevill's § 2255 motion, it must determine whether he is entitled to a COA. A COA will be issued only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 330 (2003); *accord Foster v. Quarterman*, 466 F.3d 359, 364 (5th Cir. 2006). The applicant makes a substantial showing if he demonstrates "that jurists of reason could debate the propriety of the district court's assessment of his constitutional claims or conclude that his claims are 'adequate to deserve encouragement to proceed further.'" *United States v. Wainwright*, 237 F. App'x 913, 914 (5th Cir. 2007) (per curiam) (quoting *Miller-El*, 537 U.S. at 327); *see Foster*, 466 F.3d at 364. Considering the specific facts of this case and the relevant law, the Court fails to find that "jurists could debate


the propriety” of the actions taken in this order or otherwise conclude “that [the] claims are adequate to deserve encouragement to proceed further.” Therefore, the Court DENIES Bevill a COA.

### Conclusion

Considering the foregoing, any pending motions are DENIED as moot, Bevill’s objections to the Magistrate Judge’s December 30, 2021 Findings, Conclusions, and Recommendation are OVERRULED, the Magistrate Judge’s Findings, Conclusions, and Recommendation are ACCEPTED, and a certificate of appealability is DENIED.

In the event that a notice of appeal is filed, Bevill must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* on appeal.

**SO ORDERED** this 21<sup>st</sup> day of March, 2022.



JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE